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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 44

LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL.,

Petitioners,

vs.

HAYES FREIGHT LINES, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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OPINION BELOW.

The opinion of the Supreme Court of Illinois (R. 50-62) is reported at 2 Ill. 2d 58 and at 117 N. E. 2d 106.

JURISDICTION.

The judgment of the Supreme Court of Illinois was entered on January 20, 1954 (R. 62). The petition for certiorari was filed April 19, 1954, and was granted June 7, 1954. Jurisdiction of this Court rests upon 28 U. S. C. Section 1257 (3).

STATUTES INVOLVED

Appendix A of petitioners' brief reproduces the following sections of Part II of the Interstate Commerce Act, originally enacted as the Federal Motor Carrier Act of 1935: 49 U. S. C. Sections 302(a), 304(a), part of 306(a)(1), 307(b) and 325. In addition to the foregoing respondent regards as relevant the following sections of Part II of the Interstate Commerce Act which are printed in Appendix A herein: 49 U. S. C. Sections 306(a)(1) including proviso, 312(a) and 316(b). Petitioners also reproduce as Appendix B certain excerpts from Ill. Rev. Stats., 1953 Ch. 95½, Par. 229b. We reproduce for the convenience of the Court in Appendix B herein Sections 228(a), (b) and (c), 229a and 229b of Ill. Rev. Stats., 1953 Ch. 95½.

QUESTION PRESENTED FOR REVIEW.

Whether a state statute authorizing the suspension of the right to operate over highways of the state as punishment for prior violations of state highway regulations, insofar as applicable to the interstate operations of motor carriers holding certificates of public convenience and necessity issued by the Interstate Commerce Commission, is in conflict with and superseded by Part II of the Interstate Commerce Act.

STATEMENT OF THE CASE.

Respondent accepts the statement of the case as presented in petitioners' brief.

SUMMARY OF ARGUMENT.

I.

The Supreme Court of Illinois correctly evaluated both state and national interests in holding invalid insofar as

applicable to interstate commerce the Illinois statutory provisions for 90-day and one-year suspensions of the right of motor carriers to operate on state highways, as punishment for prior violations of size and weight regulations. The invalidity of such provisions as applied to interstate common carriers holding certificates of public convenience and necessity from the Interstate Commerce Commission is particularly apparent because of their fundamental inconsistency with the primary objectives of the certificate provisions of Part II of the Interstate Commerce Act. As the legislative history shows, one of the major purposes of those provisions was to assure an appropriate balance between the supply of motor common carrier services and the actual public need for such services. In accordance with that philosophy the Interstate Commerce Commission has generally denied new certificates whenever it has appeared that existing carriers were providing adequate and satisfactory service. Conversely the Commission has firmly placed upon existing carriers the duty of providing reasonably adequate and continuous service.

The way is which enforcement of the Illinois suspension provisions would upset this delicately balanced federal system for equating the supply of, and demand for, transportation facilities is graphically illustrated in the present record. As applied to this respondent, for example, it would cause a complete cessation of the operations between Illinois and several other states of a significant and essential certificated common carrier upon whom many communities are solely dependent. Furthermore, such an interruption of operations would have so disastrous an effect upon respondent's organization that it might well be destroyed entirely as an effective link in the national transportation system which the federal statute is designed to protect and foster. This result would also be contrary to the entire spirit of the revocation provisions of Part

II of the Interstate Commerce Act which carefully define the method and grounds for suspension or revocation in such a way as to encourage the development and stability of certificated common carriers. The possibility of these effects being duplicated simultaneously in several different proceedings with respect to different carriers, as indicated in this record by the pendency of forty other similar proceedings, further demonstrates the incompatibility of the Illinois statute with the National Transportation Policy embodied in the Interstate Commerce Act.

There is nothing in the prior decisions of this Court which, even by remotest implication, casts any doubt upon the correctness of the conclusion of the Illinois Supreme Court. On the contrary, the opinions of this Court, in the most closely comparable cases, suggest that the denial of the use of state highways to interstate motor carriers as a sanction for prior violations of state law might well be unconstitutional, as an undue burden on interstate commerce, even in the absence of federal legislation, but in any event would certainly be invalid as applied to interstate operations conducted under a certificate of convenience and necessity issued by the Interstate Commerce Commission.

The reservation to the states, by the federal statute, of the power to prescribe size and weight limitations, does not militate, in any way, against the soundness of the foregoing conclusions. The Illinois Supreme Court correctly distinguished between the substantive power to prescribe such limitations, as recognized by previous decisions of this Court, and the power to enforce them by a particular sanction which involves both exclusion from interstate commerce and nullification of a federally granted right. The proper relationship between this federal right and prior violations of state highway regulations is illustrated by decisions of the Interstate Commerce Commission considering evidence of such violations as a relevant part of

the total picture in determining fitness in certificate proceedings. The State, on the other hand, has ample powers of enforcement, available in the usual sanctions of fines or imprisonment, as well as the additional power of excluding improperly loaded vehicles from the highways, without attempting to usurp the certificating functions of the Interstate Commerce Commission.

II.

There is no reasonable basis for the doubt which petitioners attempt to suggest with respect to the power of Congress to supersede the suspension provisions of the Illinois statute, as applied to interstate commerce. In several prior opinions this Court has assumed that Congress could go even farther, if it wished, and supersede entirely state size and weight regulations, as applied to interstate commerce, just as it has already done with respect to hours of service and standards of equipment. Despite petitioners' suggestion to the contrary, there is no question here of forcing the state to open its highways to interstate motor carrier traffic. The question is rather what conditions or forfeitures the state may validly impose upon interstate commerce which it has invited to use its highways. Since the forfeiture provided for by the Illinois law is plainly in conflict with a statute validly enacted by Congress, as Part II of the Interstate Commerce Act undoubtedly was, the state law must yield, in this particular, to superior federal power.

I.

THE SUPREME COURT OF ILLINOIS CORRECTLY HELD THAT THE ILLINOIS UNIFORM ACT REGULATING TRAFFIC ON THE HIGHWAYS, INSOFAR AS IT AUTHORIZES THE SUSPENSION OF THE RESPONDENT'S RIGHT TO ENGAGE IN INTERSTATE COMMERCE ON THE HIGHWAYS OF ILLINOIS, IS IN CONFLICT WITH AND SUPERSEDED BY PART II OF THE INTERSTATE COMMERCE ACT UNDER WHICH RESPONDENT HOLDS A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING SUCH OPERATIONS.

A. The Application of the Suspension Provisions of the Illinois Statute Would Vitiate the Primary Objectives of the Certificate Provisions of the Federal Statute.

The principles governing the determination as to whether a state statute must be held invalid on account of repugnance to a congressional enactment have so frequently been elaborated and applied by this Court that it would be both wearisome and fruitless to attempt any comprehensive statement of principles or analysis of authorities. For present purposes we can do no better than refer to the classic statement in *Savage* v. *Jones*, 225 U. S. 501, 533 (1912): "* * * when the question is whether a Federal act overrides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished —if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect— the state law must yield to the regulation of Congress within the sphere of its delegated power." It is true that in the *Savage* case the State statute was sustained, but less than a year later, in *McDermott* v. *Wisconsin*, 228 U. S. 115 (1913), this Court applied the same principles to invalidate a state law as inconsistent with the Federal Food and Drugs Act, saying: "* * * it is equally well settled

that the state may not, under the guise of exercising its police power or otherwise, impose burdens upon or discriminate against interstate commerce, nor may it enact legislation in conflict with the statutes of Congress passed for the regulation of the subject, and if it does, to the extent that the state law interferes with or frustrates the operation of the acts of Congress, its provisions must yield to the superior Federal power given to Congress by the Constitution" (228 U. S. at 131-132). It is with these guiding considerations in mind that we turn to a detailed analysis of the suspension provisions of the Illinois Uniform Act Regulating Traffic on the Highways and their relationship to the National Transportation Policy and the entire pattern of regulation embodied in Part II of the Interstate Commerce Act (originally enacted as the Federal Motor Carrier Act of 1935).

Chief Justice Schaefer, writing the unanimous opinion of the Illinois Supreme Court, succinctly summarized the fundamental grounds for holding the Illinois statute invalid insofar as it authorizes the suspension of respondent's right to engage in interstate commerce on the highways of the state, when he said: "But we do not see how an adequate national transportation system can be maintained if the comprehensive transportation network which it contemplates is to be subject to disruption by state suspension of operating rights for violation of load limits or other traffic regulations" (T. p. 61).

The practical wisdom of this remark is well illustrated by the facts shown in the record of this case. According to the unchallenged allegations of its complaint, respondent, in the conduct of its business as a common carrier, "operates 1929 motor vehicles and employs 2059 persons, of whom 736 are utilized both in interstate and intrastate commerce in its operations in Illinois" (T. p. 5). The respondent "conducts its operations under a certificate of public convenience and necessity issued by the Interstate

Commerce Commission * * * between various important and strategic points in the states of Illinois, Indiana, Iowa, Missouri, Kentucky, Tennessee, Ohio, Michigan, Pennsylvania and West Virginia" (T. p. 6). In the course of its business as a common carrier of property by motor vehicle, in both interstate and intrastate commerce, respondent "serves approximately 1035 cities, villages and communities in the state of Illinois, and 2500 cities, villages and communities in the other states in which it operates, some of which are solely dependent upon it for their common carrier service" (T. p. 6). Among other things, respondent "transports over the highways of Illinois, dangerous explosives for the United States Government * * * in furtherance of the defense effort" and "under contract with the U. S. Post Office Department, operates over the highways of the State of Illinois in its performance of a postal service, handling United States mail over various routes between, among other places, Sparta, Illinois and St. Louis, Missouri" (T. p. 6).

It is hardly necessary to remind this Court that a certificate of public convenience and necessity under Part II of the Interstate Commerce Act is issued only upon a finding that the carrier was "in bona fide operation as a common carrier by motor vehicle, on June 1, 1935" (49 U. S. C. § 306(a)(1)) or upon a finding "that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity" (49 U. S. C. § 307(a)). In view of the phenomenal growth of the motor carrier industry since the enactment of the Federal Motor Carrier Act in 1935,[1]

1. The increase in the motor carrier industry is amply illustrated by the following latetst available data:

	1939	1951
Reporting Carriers	957	1737
Total Assets	$133,916,746	$ 983,698,286
Total Operating Revenues	378,473,829	2,727,853,566
Total Expenses	359,784,771	2,603,324,762

it is apparent that the public need underlying the early grants of certificates of convenience and necessity has not only continued but has generally and substantially increased, and that the public interest is consequently bound to be seriously affected by any significant suspension of operating rights under such certificates. The overriding public interest in the availability of continuous service from holders of certificates of public convenience and necessity under the Interstate Commerce Act is also emphasized by the statutory provision making it "the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce" (49 U. S. C. § 316(b)) and authorizing the Commission to "establish reasonable requirements with respect to continuous and adequate service" (49 U. S. C. § 304(a)(1)). In its administration of the statute, the Interstate Commerce Commission has further emphasized and implemented these provisions by incorporating in every certificate the requirement that the "holder thereof shall render reasonably adequate and continuous service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate." See e.g., *Pennsylvania Greyhound Lines, Inc.* v. *American Bus Lines, Inc.*, 54 M. C. C. 365 (1952). The authority for such revocation is made explicit by the provision of Section 212 of the Act to the effect that a certificate may be "suspended,

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Statistics of Class I Motor Carriers for 1939, Statement No. 4120, and Statistics of Class I Motor Carriers for 1951, Statement No. 5351, both published by the Interstate Commerce Commission based upon financial data supplied by motor carriers subject to its jurisdiction. The statistics include only Class I Motor Carriers operating predominantly in intercity service, which in 1939 included motor carriers with a gross revenue in excess of $100,000.00, and in 1951, motor carriers with a gross revenue in excess of $200,000.00. As can be seen, the foregoing data excludes all other segments of the motor carrier industry.

changed or revoked, in whole or in part, for willful failure to comply with any provision of this chapter, or with any lawful order, rule or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license" (49 U. S. C. § 312).

As stated in the declaration of the National Transportation Policy, set forth in the Act of September 18, 1940, amending the Interstate Commerce Act, the federal regulatory provisions are directed "to the end of developing, coordinating and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense" (54 Stat. 899, 49 U. S. C. A., p. 5, Note). The basic philosophy underlying motor carrier regulation particularly, as expressed in the Senate Report recommending enactment of the Federal Motor Carrier Act of 1935 was that unrestrained competition "has been carried to an extreme which tends to undermine the financial stability of the carriers and jeopardizes the maintenance of transportation facilities and service appropriate to the needs of commerce and required in the public interest" (Sen. Report No. 482, 74th Congress, 1st Session (1935), p. 2).[2]

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2. Compare also the following statement of Commissioner Eastman, then Federal Coordinator of Transportation, in presenting the Motor Carrier Bill to the Senate Committee on Interstate Commerce:

> "The most important thing, I think, is the prevention of an over-supply of transportation; in other words, an over-supply which will sap and weaken the transportation system rather than strengthen it. In the case of railroads that was done in 1920 by the provision that prior to any new construction a certificate of convenience and necessity must be secured from the Commission. In my judgment it would have been much better if there had been such a provision many years before. It would have prevented certain railroad construction which tends to weaken the railroad system and situation at the present time. The States have, I think, in all cases, found the necessity in their regulation of motor transportation to

In accordance with that philosophy, the Interstate Commerce Commission has sought to administer its certificating authority under the statute so as to strike an appropriate balance between the needs of the shipping public for common carrier service and the available supply of such service through certificated operators. Thus, the Commission has repeatedly denied applications for new or extended operating rights on the ground that the existing carriers were able to provide adequate and efficient service. For example, in *Fisher Common Carrier Application—New Operation*, 30 M. C. C. 217, 222 (1941), in denying such an application, the Commission said:

> "We have consistently adhered to the view that existing carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territory served by them. * * * These carriers are expected to maintain regular service at all points on their routes, day in and day out, for the transportation of shipments in whatever quantity offered."

Similarly, in *Pine Tree Transport, Inc., Extension—Frozen and Canned Fruits*, 54 M. C. C. 669, 674-675 (1952), the Commission denied an extension application on the following basis:

> "In every proceeding of this type it is the burden of the applicant to prove that the motor carrier operation proffered is required by public convenience and necessity. If the evidence shows that service is already available between the points involved, it follows that inadequacy of such existing service must be shown. * * * Existing carriers have substantial investments in operating rights, facilities, and equipment necessary to institute and sustain their opera-

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provide for that prevention of an over-supply. It is a provision which has been adopted in most of the foreign countries that I have inquired into; in other words, the granting of certificates or permits in order to prevent an over-supply which weakens the situation." (Hearings on S. 1629, S. 1632, S. 1635, 74th Congress, 1st Session, Part I, page 78.)

tions, and they are entitled to all the traffic that they can handle adequately, efficiently, and economically in the territories which they serve without the competition of an additional service. In the absence of convincing evidence, therefore, of a clear-cut public need for applicant's proposed service which the more experienced and better-equipped existing carriers cannot or will not satisfy, we conclude that the application must be denied."

These and many other decisions[3] illustrate the zealousness of the Commission in attempting to equate the available supply of, and public need for, motor carrier facilities, in accordance with Congressional policy.

It is into this intricate and delicately balanced system for adjusting supply and demand in the field of motor common carrier services that the Illinois statute, to the extent that it authorizes the suspension of interstate operating rights, would thrust an alien and disruptive hand. The effect of such a suspension upon the service rendered by this respondent would be, as the Complaint alleges, that "the service which plaintiff, as a common carrier, is required to provide and perform for the general public under its interstate operating rights would be terminated not only at points in the State of Illinois, but also in fact in the various other cities and towns of other states which plaintiff serves in interstate commerce" (T. p. 9). As a concommitant effect the respondent "would be compelled to release a very substantial number of its experienced and

3. Other typical examples of this philosophy are the following: *H. A. Brewer, Extension of Operations—Packing House Products*, 48 M. C. C. 667 (1948); *Kenosha Auto Transport Corporation, Extension—Gadsden, Ala.*, 52 M. C. C. 123 (1950); *W. J. Halloran Trucking Co., Extension—Heavy Commodities*, 52 M. C. C. 749 (1951); *Walter C. Benson Co., Extension—New York, New Jersey and Pennsylvania*, 9 F. C. C. § 32,604 (1952); *Anton Vidas Contract Carrier Application*, 9 F. C. C. § 32,689 (1952); *Truckway Corporation, Extension—Florida*, 10 F. C. C. § 33,049 (1954); and *Diamond Transportation System, Inc., Extension—Burlington, Iowa*, 10 F. C. C. § 33,064 (1954).

valuable personnel, a large number of whom have been continuously employed for many years, full well knowing that such employees would necessarily have to be employed elsewhere, so that they would not return at a later date to plaintiff, or, in the alternative, plaintiff would be compelled to pay such employees even though they were not working" (T. p. 10). Furthermore, the continuation of such suspension for anything like the 90 days or one year period of suspension authorized by the Illinois statute, might well "cause financial ruin and bankruptcy to plaintiff because of its inability to provide and render service over the highways of Illinois," particularly since "approximately 62½ per cent of all plaintiff's operations in interstate commerce either originate at points in Illinois or are destined to points in Illinois, or must of necessity be handled in operations involving trips traversing the highways of the State of Illinois" (T. p. 10). In short, the effect of enforcement of the Illinois statute might well be, not merely to disrupt respondent's service for the period of the suspension order, but so completely to destroy its organization as to make it impossible for it ever to resume that service.

In this connection, it should, of course, be noted that the effect of such a suspension under the Illinois statute would be to supplant and nullify, in substantial part, the provisions of Section 212(a) of the Interstate Commerce Act relating to suspension and revocation of certificates. Both the provisions of this section and its administration by the Commission indicate the significance attributed by the National Transportation Policy to an interruption of service. With certain narrow exceptions, a certificate may be suspended, changed, or revoked by the Commission only after notice and hearing. Even after notice and hearing, a certificate may not be revoked by the Commission "unless the holder hereof wilfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Com-

mission, with a lawful order of the Commission, * * * commanding obedience to the provision of this chapter, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate found by the Commission to have been violated by such holder" (49 U. S. C. § 312(a)). The administration of this section by the Commission shows a keen regard for the serious effect of either suspension or revocation upon the interests of the certificate holder and upon the public interest in continued service. For example, in *Smith Bros., John C. Sandidge, Receiver, Revocation of Certificate*, 33 M. C. C. 465, 472 (1942), the Commisson said:

> "* * * In our opinion, the language of the foregoing section is clear and definite and unmistakably shows that Congress intended that a certificate, once effective, may be terminated by us only on the conditions, and according to the procedure, therein specifically provided. We may issue decision upon decision, and order upon order, on an application for a certificate so long as sufficient reason therefor appears and until all controversy is determined, but once a certificate, duly and regularly issued, becomes effective, our authority to terminate it is expressly marked off and limited. All the antecedent decisions and orders are essentially procedural in character, and may be set aside, modified, or vacated, but the certificate marks the end of the proceeding, just as the entry of a final judgment or decree marks the end of a court proceeding. To hold that under section 208 (a) we have the power to include in certificates self-executing forfeiture terms, conditions, or limitations would make section 212 (a) merely surplusage and would wipe out the stability and certainty with respect to operating rights of common carriers by motor vehicle required in the public interest and contemplated by the act. * * *"

Similarly, in *I. C. Black & Sons, Common Carrier Application*, 53 M. C. C. 572, 574-575 (1951), the Commission said:

> "* * * Although past unauthorized operations, and past failures to comply with our rules and regulations

> cannot be condoned, they do not, standing alone, constitute sufficient grounds for the revocation of certificates, nor, we think, for the refusal to reinstate them where such action appears otherwise justified. The act contemplates that certificates duly issued create a vested motor-carrier status in the holders which may not be taken away without giving such holders a reasonable opportunity to correct the faults giving rise to the revocation proceedings. It is not contemplated that revocation proceedings be utilized as a medium of punishment for past wrongdoing * * *".[4]

Of course, a suspension order under the Illinois statute is not in terms explicitly directed at the certificate granted by the Interstate Commerce Commission. But the substance of such an order is exactly the same as the suspension of a certificate insofar as the right of respondent to operate in interstate commerce over the highways of Illinois is concerned. The order must be directed at the entire business of the respondent insofar as that business is conducted in or through Illinois; it is not limited to the particular vehicles or drivers or shippers involved in the violations, and once issued it cannot be complied with in any way except by complete cessation of operations during the period of suspension. As the record shows, the effect of such a cessation may well be the complete ruin of the respondent, both as a business entity and as an effective instrumentality of interstate commerce. It was in reliance upon its certificate, and upon the assurance of the

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4. For other decisions to the effect that certificates will be revoked only through strict observance of Section 212(a) of the Interstate Commerce Act, see *Gregg Cartage & Storage Company, Common Carrier Application*, 21 M. C. C. 17 (1939); *Reinhardt Transfer Company—Purchase—Ray Lykins*, 38 M. C. C. 665 (1942); *Blackhawk Line, Incorporated (Joseph Kruger, Receiver) Revocation of Certificate*, 42 M. C. C. 58 (1943); *E. A. Christianson and Ruth Green, Revocation of Certificate*, 42 M. C. C. 238 (1943); *Joint Northeastern Motor Carrier Association, Inc.* v. *Jack Rose and M. Welloff, d/b/a Rose Transportation Company*, 43 M. C. C. 487 (1944); and *William S. Hickman, Revocation of Certificate*, 52 M. C. C. 201 (1950).

statute that the rights represented by the certificate could not be revoked except in the manner and for the reasons specified in the Federal statute, that the respondent invested the energy and capital necessary for the development of its far-flung organization. As the legislative history shows, it was exactly for the purpose of encouraging such investment and development, and so assuring the strength and stability of the motor carrier industry as an essential element of the national transportation system, that the certificate provisions of the Federal Motor Carrier Act were designed.[5] All this solicitude would be a mockery if State courts, enforcing such penalties as provided by the present Illinois statute, could accomplish exactly the same effect as an Interstate Commerce Commission order revoking or suspending a certificate.

It should also be recalled that the effect of a suspension of respondent's operating rights is merely one illustration

5. Compare the following statement in the Report of the Federal Coordinator of Transportation, 1934, recommending the passage of the Federal Motor Carrier Bill:

> "It is likely that regulation of the kind proposed will somewhat lessen the flexibility of truck operations and set up requirements which small or poorly financed operators will not be able to meet. But it should confer benefits on the trucking industry which will more than compensate for these losses, by promoting a more orderly conduct of the business, lessening irresponsible competition and undue internal strife, encouraging the organization of stronger units, and otherwise enabling the industry to put itself on a sounder and more generally profitable basis. It will also enable the common carrier to strive more effectively for his share of the business, through proper recognition of the greater responsibility which he assumes and by reducing the number of pseudo-contract operations, which in the past have sought the more profitable business, leaving to the common carrier more generally the small freight and the responsibility of furnishing scheduled service the year around. It will also tend to reduce the friction which now exists by reason of conflicting State laws and regulations. The ultimate effect may, in fact, be a degree of improvement in the conduct and effectiveness of the business which will surprise certain of the ardent proponents of regulation." (Senate Document 152, 73rd Congress, 2nd Session, page 33.)

of the disruptive effect upon the national transportation system inherent in the application of these Illinois statutory provisions. As this record shows, at the time of the institution of these proceedings, there were already pending in various Circuit courts of Illinois, approximately forty other complaints seeking the suspension of motor common carrier operating rights for periods of ninety days each (T. p. 11). The Illinois statute does not provide for, nor contemplate, any weighing by the enforcing court of the harmful effects upon the public interest in general, and upon interstate commerce in particular, of the suspension of operating rights; and, as a practical matter, it is difficult to conceive how a trial court in Illinois, in any particular proceeding, divorced from the whole scheme of federal regulation, could sensibly appraise the ultimate effects upon interstate commerce of the interruption of any individual operator's ability to traverse the highways of Illinois in the course of serving such commerce. But even more apparent is the complete impossibility of appraising, in any one enforcement proceeding, the cumulative effect upon interstate commerce of numerous proceedings in different courts involving the suspension of different operating rights. Yet the cumulative effect of such proceedings, culminating in any significant number of suspensions, would surely be to create havoc in the national transportation system which the Interstate Commerce Act is designed to protect and foster.

It would be surprising indeed to find as petitioners somewhat halfheartedly suggest, that this Court has ever sustained such a direct invasion of federal right or given sanction to a state statute so fundamentally in conflict with applicable federal law. There is indeed no decision of this Court which lends even the color of support to such a suggestion. Petitioners' brief refers somewhat cryptically to *Welch Co.* v. *New Hampshire*, 306 U. S. 79 (1939), as "most nearly analogous to the present question" (Brief,

p. 16). Examination of the facts of that case, particularly of the opinions below and the record and briefs in this Court, discloses the crucial difference that it involved no attempt by the state to suspend the right to operate solely in interstate commerce. On the contrary, the order of the New Hampshire Public Service Commission there under attack was explicitly limited to the suspension of "any and all registration certificates issued by this Commission, permitting the H. P. Welch Company to lawfully *transport property* for hire in motor vehicles *between points within this State*" (emphasis supplied) (See Transcript of Record in this Court, p. 24; also 89 N. H. 428 at 429 (1938)). From the briefs filed in this Court, it is apparent that both parties interpreted this to mean that New Hampshire had not undertaken to forbid appellant the use of its roads while engaged solely in interstate commerce. In the Statement Opposing Jurisdiction, the Attorney General of the State of New Hampshire said: "The right of appellants to carry on an interstate business has not been restricted by the State except as the regulation of its intrastate operations may touch and affect appellant's interstate business" (p. 2). With respect to this aspect of the case, the appellant's contention was simply that its operations were predominantly interstate, and its interstate and intrastate operations so commingled, that the application to such operations of the substantive provisions of the State law, establishing maximum hours for continuous driving on the state highways, was inconsistent with and superseded by the authority granted by Congress to the Interstate Commerce Commission to establish maximum hours for employees engaged in interstate commerce (see Brief for Appellant, pp. 13-14). It was within the framework of the contentions thus presented, that this Court formulated, and answered in the negative, "the sole question * * * whether Congress intended that from the time of the federal enactment until effective action by the Com-

mission, there should be no regulation of periods of continuous operation by drivers of motor vehicles hauling in interstate commerce" (306 U. S. at 54). It does not appear from the record in the *Welch* case whether the petitioner was operating under a certificate granted by the Interstate Commerce Commission, but that fact was immaterial since there was no suggestion that the effect of suspension of the state certificate was to prohibit the petitioner from operating solely in interstate commerce.

In *Eichholz* v. *Public Service Commission of Missouri*, 306 U. S. 268 (1939), on the other hand, the State statute did provide that it should be unlawful to use any highways of the state without a permit from the Commission, and it was this permit which was revoked for failure to observe its conditions, namely, not to engage in intrastate commerce. However, as Chief Justice Hughes said: "Appellant's complaint did not attack these statutes; on the contrary, he asserted that he had fully complied with their provisions. His complaint was of the order of the Commission revoking his permit. We confine ourselves to the question thus presented" (306 U. S. at 272-273). But even more important for present purposes was the next comment of the Chief Justice: "When the Commission revoked the permit, the Interstate Commerce Commission had not acted upon appellant's application under the Federal Motor Carrier Act and meanwhile the authority of the state body to take appropriate action under the state law to enforce reasonable regulations of traffic upon the state highways had not been superseded" (306 U. S. at 273). And finally, with respect to the particular contention of the appellant that the transportation in which he had engaged was truly interstate and not, as the State Commission had found, "a plain subterfuge and a fraud" (Transcript in this Court, p. 30), in that he had unlawfully engaged in intrastate business under the pretense of transacting interstate business, the Chief Justice was careful

to say: "* * * If appellant's hauling of the merchandise in question across the state line was not in good faith but was a mere subterfuge to evade the State's requirement as to intrastate commerce, there is no ground for saying that the *prohibition of the use of the interstate permit to cover such transactions*, and the application of the Commission's rule prohibiting them in the absence of an intrastate certificate, was an unwarrantable intrusion into the federal field or the subjection of interstate commerce to any unlawful restraint * * * The ultimate question is thus one of fact, whether the transactions of appellant were of the character described by the Commission and in the findings of the District Court" (306 U. S. at 274-275 (Ital. supplied)). Thus the Chief Justice expressly limited the effect of the holding to sustaining the right of the state to prevent an interstate certificate from being used as a cover for intrastate operations. In the light of these passages, it is apparent that Chief Justice Hughes was particularly concerned that the decision should not be interpreted as a broad holding to the effect that the state could validly prohibit truly interstate operations as a sanction for violation of state law, and even more concerned to preserve the proposition that the grant of the federal certificate to engage in interstate commerce might well override any such state prohibition.[6]

It is also instructive to compare the present problem with that presented in *Fry Roofing Co.* v. *Wood*, 344 U. S. 157 (1952), in which this Court, by a five to four vote, sustained the application of an Arkansas statute requiring the issuance of a permit by the State Public Service Commission as a condition to engaging "in the business of

6. The Supreme Court of Texas, in *Railroad Commission of Texas* v. *Querner*, 150 Tex. 490, 242 S. W. 2d 166 (1951), gave effect to this reservation in the Chief Justice's opinion in the *Eichholz* case when it held, in a similar situation, that the rights of a motor carrier holding a federal certificate to operate in interstate commerce over state highways could not be revoked as a sanction for violation of state law.

a contract carrier by motor vehicle over any public highway in this state." In rejecting the dual contention that this regulation, as applied to interstate operations, would "unduly burden interstate commerce in violation of the United States Constitution and would invade a field of regulation preempted by the Federal Motor Carrier Act," the opinion of this Court carefully delimited the scope of the holding in the following language:

> "* * * And the State Commission here expressly disclaims any 'discretionary right to refuse to grant a permit for contract carriage where that carriage is in interstate commerce.' The state asserts no power or purpose to require the drivers to do more than register with the appropriate agency. * * * Here neither petitioner nor the drivers have obtained any kind of authority from the Interstate Commerce Commission. Indeed, petitioner's whole case has been built on the premise that neither it nor the drivers must get a permit from the state or the national regulatory agency. In this situation our prior cases make clear that a state can regulate so long as no undue burden is imposed on interstate commerce, and that a mere requirement for a permit is not such a burden. It will be time enough to consider apprehended burdensome conditions when and if the state attempts to impose and enforce them. At present we hold only that Arkansas is not powerless to require interstate motor carriers to identify themselves as users of that state's highways" (344 U. S. at 161-163).

Examination of the foregoing cases thus reveals that in each there were at least two significant points of distinction from the present problem. In the first place, in none was there any issue presented with respect to the nullification of either a certificate or permit from the Interstate Commerce Commission. In the second place, it is also apparent that this Court carefully avoided any implication that a State, entirely apart from the Federal statute, might properly claim the right to deny the use of its high-

ways to interstate motor carriers as a sanction for prior violations of state law. Yet it is the very essence of the Illinois statute that prior violations are the basis for imposing such a sanction. Consequently, even in the absence of a controlling federal statute, there is good reason to believe, under the prior decisions of this Court, that the effect of the Illinois statute is to impose an undue and unconstitutional burden on interstate commerce. For present purposes, however, it is unnecessary to explore this particular issue further. Here there unquestionably is a controlling federal statute with respect to which it may aptly be said, in the language of the *Savage* case, that "its operation within its chosen field must be frustrated and its provisions be refused their natural effect," if Illinois be permitted to suspend, as a sanction for prior violations of state law, the right of a certificated common carrier to operate in interstate commerce over the highways of the state.

B. The Exercise of the Suspension Power Is Not a Necessary or Appropriate Adjunct of the Power Reserved to the States by the Federal Statute to Prescribe Size and Weight Limitations for Motor Carriers.

Without even attempting to come to grips with the foregoing analysis, upon which the decision of the Illinois Supreme Court under review is predicated, petitioners nevertheless suggest that there is some inconsistency between that decision and the decisions of this Court in *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177 (1938), and *Maurer* v. *Hamilton*, 309 U. S. 598 (1940), upholding state authority to establish size and weight limitations applicable to motor carriers operating on state highways in interstate commerce. This suggestion blandly ignores the distinction carefully drawn by the Illinois Supreme Court between the state's power, on the one

hand, to establish such substantive regulations, and to enforce them by the usual civil or criminal penalties, including fines or imprisonment, and the authority of the state, on the other, to impose as a sanction, the nullification of the federally granted right of the business enterprise to operate in interstate commerce. There is, of course, as this Court has recognized, a delicate relationship between the state's interest in the preservation of its roads and the federal regulation of interstate motor carrier operations. Since Congress has not specified, nor authorized the Interstate Commerce Commission to specify, regulations with respect to sizes or weights of motor carriers, this Court has concluded that the state is free, within the bounds of reason, to impose such limitations as it considers proper. In the event of violation, not only may the state impose fines and imprisonment, as did the statutes involved in the *Barnwell* and *Maurer* cases, but it may also presumably stop and prevent from continuing on the highway any motor vehicle which it finds not to be in compliance (Compare Section 229(b) of Illinois Rev. Stats., Ch. 95½, Appendix p. 42). However, when the state takes the additional step taken here, of undertaking to suspend the right of the business entity to conduct operations over the highways of the state because of past violations, it attempts to exact as a penalty the virtual surrender of a federal right, which, as elaborated above, serves not only the interest of the holder himself, but also a much broader public interest within the purview of the federal statute. There is not the slightest hint, either in the previous opinions of this Court, or in the legislative history of the Federal Motor Carrier Act, that the possibility of such a penalty being applicable to interstate carriers even occurred to the sponsors of the federal legislation. The statement of Commissioner Eastman, quoted in the opinion of this Court in *Maurer* v. *Hamilton*, and in the petitioners' brief, refers to the right of the state "to protect the high

ways against unsafe or unreasonable use," but neither the statement itself, nor the context, carry any implication that the federally granted right to operate in interstate commerce might be substantially nullified on account of prior violations of state law.[7]

The Illinois Supreme Court also appropriately distinguished the decision of the Virginia Supreme Court in *Joyner* v. *Matthews*, 193 Va. 10, 68 S. E. 2d 127 (1951), upholding a state statute which denied the use of the state's highways to motor carrier operators in default in payments imposed on account of violations of weight regulations. There the operators contended that because they themselves, as distinguished from their drivers, had not been convicted of violating the statutory load limits, they could not be subjected to such payments nor could their right to operate on the highways of the state be suspended. The Virginia Supreme Court held that the owners of the motor carriers could properly be made responsible for their drivers' violations and that they could be denied the use of the highways so long as they were in default in the statutory payments. The Court was also careful to state, of the operator's position, "So long as the violation is paid for at the rate fixed * * * he can continue to operate"

7. How far any such thought was from Commissioner Eastman's mind is shown by the statement made by him a few minutes later in the hearings, when he said: "This is the situation as I understand it. A State now has power to grant certificates of operation covering intrastate service. It does not have any power to regulate interstate operations. Therefore, if a bus operator to whom they have not given a certificate for intrastate operation comes into the State and engages in interstate service, they cannot and do not prevent him from operating, but they do say that he shall not engage in intrastate service without a certificate from the State, and they prevent him from engaging in such service. Under this bill it would be the interstate Commerce Commission which would grant the certificate for interstate operations, but that would only cover interstate operations; and I do not think that operator, even if he had a certificate from the Interstate Commerce Commission, could engage in intrastate operations without authority from the State." (Hearings on S. 1629, S. 1632, S. 1633, 74th Congress, 1st Session, Part 1, page 93.)

(193 Va. at p. 15, 68 S. E. 2d at 131). It may be assumed for present purposes, that an operator who refuses to make payments validly imposed by the state as a prerequisite to the use of the highways, such as the usual license tax or registration fees, or the special payments required in the *Joyner* case, may be denied the use of the highways so long as he persists in that refusal, just as a truck found to be operating in violation of weight or size limitations might be stopped and excluded from the highways until the violation is corrected. See too, *Aero Mayflower Transit Co.* v. *Board of Railroad Commissioners*, 332 U. S. 495 (1947); *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542 (1950). However, this is a far different thing from saying that the holder of a certificate to operate under the federal law may be denied, for an arbitrary period, the use of the state highways in interstate commerce because of prior violations of state laws, irrespective of whether such violations be characterized as "habitual" or by any other vaguely derogatory formula.

The proper relationship between prior violations of state size and weight regulations and the federal right to operate in interstate commerce is indicated by the Interstate Commerce Commission's consideration of such violations in passing upon applications for certificates of public convenience and necessity under Section 207(a) of Part II of the Interstate Commerce Act (49 U. S. C. § 307(a)). In such proceedings, the Commission has repeatedly recognized the relevance of evidence of violations of state highway regulations as bearing on the question of fitness to operate. For example, in *Southwest Freight Lines, Inc., Extension—Glass Product*, 54 M. C. C. 205, 219 (1952), after considering evidence that the applicant had violated the law of Missouri with respect to overloading, the Commission said:

> "We are convinced that since the finding against it in the State proceeding, applicant has taken such cor-

rective action as to demonstrate its willingness, ability, and desire to comply with all applicable requirements both State and Federal * * *

"Since the issuance of the report in the intrastate proceeding against applicant, some violations of the Missouri laws or regulations are admitted, but there is no evidence that the violations were willfully committed. On the contrary, it is clear that applicant makes extensive efforts to comply not only with Missouri laws, rules, and regulations, but also those of other jurisdictions, and it fairly appears that some violations are unavoidable on account of the shifting of loads or other causes * * * In our opinion, the evidence presented on further hearing does not warrant a finding that applicant is unfit or unable properly to perform operations in interstate commerce."

Similarly, in *Hayes Freight Lines, Inc., Extension—Alternate Routes in Michigan*, 54 M. C. C. 643, 649-650 (1952), after considering evidence of overweight violations, principally in Illinois, the Commission said:

"In considering the question of applicant's fitness, we are impressed with the obvious fact that the evidence as a whole is preponderantly in applicant's favor. There is no appreciable evidence in refutation of applicant's averment that it is in good regulatory standing in Michigan, Ohio, and Indiana. In all respects, applicant has a good or comparatively good record in Kentucky; and, viewed in the light of the evidence submitted in applicant's behalf, the relatively few violations in that State require no further consideration. Except for overweight violations, applicant has a good record in Illinois; and, as noted, these were axle overweights rather than excess gross tonnage violations. There is plausibility, and possibly some merit, in applicant's contention that some of these violations were due to the shifting of cargo in transit; and the same must be said of applicant's allegation that there is often a substantial variance in weight results between different scales. But what is perhaps more important is the fact that applicant has been making sincere and practical efforts to avoid or

> reduce these violations, and that its efforts have been progressively successful * * * In all the circumstances, we must conclude, as the joint board did, that applicant is fit and able, financially and otherwise, properly to conduct the operation herein authorized."

The unreported case of *Hall Freight Lines, Inc.—Extension—Alternate Route*, MC-9942, Sub No. 7, decided by the Commission (in December, 1953), is another example of the Commission's concern with the problem of state weight violations in relation to a carrier's fitness to perform a proposed operation. In that case, Hall Freight Lines, Inc. sought alternate route authority and the Joint Board had approved the grant. Subsequently, however, the case was reopened solely to inquire into the applicant's fitness. The Joint Board then held that in view of the applicant's overload violation record, it was unfit to perform the proposed operation, and therefore recommended the denial of the application. However, on further hearing, the Joint Board found applicant fit, and in affirming the Joint Board's ruling, the Commission said:

> "We do not agree that the joint board overlooked or disregarded State law overweight violations. Its report shows that this matter has been thoroughly considered. While we agree with rail carrier protestants that it is against public policy and the law to operate overweight trucks, we also believe that applicant has the right to explain the nature and extent of any overweight violations. The joint board was justified in taking this factor into consideration and also in giving consideration to the effort and progress which applicant has made in overcoming its shortcomings in this respect."

It is apparent from the above passages that the Commission gives serious consideration to evidence of violation of state highway regulations, including specifically weight regulations such as those here involved, in deter-

mining whether to grant or to extend operating rights.[8] It is also apparent that the Commission considers such violations in the context of the applicant's entire operations in determining its fitness to operate from the point of view of the public interest. Thus, even if a suspension order under the Illinois statute could be twisted into a determination that, by prior violations, the operator had demonstrated inability or unwillingness to comply in the future with state regulations, such a determination would plainly be an attempt to usurp the authority of the Interstate Commerce Commission to determine fitness in passing on the qualifications of applicants for new certificates

8. The *Southwest*, *Hayes* and *Hall* cases all indicate, aside from the question of a relationship between state weight violations and a carrier's fitness to perform a proposed operation, that the Commission will inquire, in each proceeding, into the fitness of carriers seeking additional operating rights. This principle is succinctly stated in *Joseph P. Tripoli-Extension-Brick*, 53 M. C. C. 212, 214-215 (1951), wherein the Commission said:

> "Applicant points out, in his first argument, that he now holds a certificate and he contends that, from this fact alone, it should be assumed that he is fit to conduct the proposed operation. This contention is clearly without merit. Section 207(a) of the Act provides that we may issue a certificate authorizing a proposed operation only if the applicant is found to be fit, willing and able properly to perform the proposed service and to conform to the provisions of Part II of the Act and our rules and regulations thereunder. It is well settled that an applicant must establish his fitness to conduct a proposed interstate operation regardless of whether or not he had previously been found fit to conduct other operations and been granted a certificate authorizing such operations. See for example, *Lieberman Extension of Operations—Michigan*, 48 M. C. C. 399, 402."

Examination of the records of the Interstate Commerce Commission will disclose that since only October 21, 1949, this respondent, Hayes Freight Lines, Inc., under Docket No. MC-42329 and sub-numbers thereunder, has been granted additional operating rights in 23 separate proceedings, in each of which it has been determined to be "fit, willing and able properly to perform the service proposed."

under Section 207, as well as to determine grounds of revocation under Section 212.[9]

If it were indeed true that suspension provisions such as those enacted by Illinois were the only effective means of enforcing state laws governing the permissible size or weight of motor carriers using the highways, there might be more reason for this Court to overlook or minimize the obvious conflict between this penalty provision and the entire policy and pattern of Part II of the Interstate Commerce Act. In this connection, petitioners, without the slightest support in the record, cavalierly suggest that the "imposition of fines is no deterrent to overloading of motor vehicles" because the "pecuniary exaction is merely one more cost of doing business passed on to the shipper" (Brief, p. 15). To appreciate the complete falsity, as a matter of fact, of the assumptions underlying this argument, one need only turn to the opinions of the Interstate Commerce Commission in the proceedings already referred to, involving the fitness of applicants for certificates of convenience and necessity, where the Commission summarizes the tremendous outlays of energy and expense made by this respondent and other operators, in striving to achieve complete compliance with state weight regulations. But irrespective of this fact, it challenges common sense to suggest that the state could not impose penalties, in the form of fines, or prison sentences, sufficiently heavy

9 The Commission presently has in effect the following regulation:

> "Every motor vehicle shall be driven in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Commission which impose a greater affirmative obligation or restraint." (Sec. 192.3 contained in I. C. C. Order April 14, 1952, effective July 1, 1952, 17 F. R. 4427.)

It is evident that under Section 212 of the Interstate Commerce Act, the persistent violation of the foregoing regulation would provide the basis for revocation or suspension proceedings. If it were deemed advisable, the Commission could make similar provision regarding compliance with state size and weight regulations.

to exact the fullest measure of compliance that is humanly possible under the circumstances. Similarly, with respect to the particular emphasis placed by the brief of the American Automobile Association, *amicus curiae*, on the importance of individual axle overloads as a detriment to the highways, it should be noted that such overloading can be of no possible economic benefit to the motor carrier, since it does not in any way increase his revenues or decrease his costs.[10] It is, therefore, hardly conceivable that the threat of fines, or imprisonment, or simply the inconvenience and delay occasioned by the exclusion of particular vehicles from the highways until reloaded in accordance with specifications, would not provide sufficient incentive to cause motor carrier operators to use all practicable precautions in attempting to comply with individual axle weight requirements. Finally, perhaps the best evidence of the lack of any real need for this type of suspension sanction is the fact that, in addition to Illinois, there appears to be only one other state (Indiana) which has felt called upon to experiment with it.[11] All these factors lend additional support to the unanimous judgment of the Supreme Court of Illinois, which is certainly peculiarly sensitive to the interests of the state in the preservation of its highways. Compare *Bode* v. *Barrett*, 412 Ill. 204, 321 (1952), aff'd, 344 U. S. 583 (1953).

For all the foregoing reasons we submit that the Supreme Court of Illinois correctly evaluated both state and national

10. In this connection it is enlightening to note that out of the 157 alleged violations which form the basis of the complaint pending against respondent in the Circuit Court of Marion County, Illinois, only two resulted from gross overloads as distinguished from axle overloads (T. pp. 4, 5). Thus, it is apparent that insofar as respondent's individual case illustrates the general enforcement problem, there is no basis for inferring a deliberate intention on the part of motor carrier operators to countenance violations as an economically preferable alternative to compliance.

11. For a complete analysis of comparable state statutes, see Appendix C, *infra*.

interests in concluding that the suspension provisions of the Illinois statute as applied to interstate commerce are in fundamental conflict with the National Transportation Policy embodied in Part II of the Interstate Commerce Act.

II.

THERE IS NO REASONABLE DOUBT AS TO THE CONSTITUTIONAL POWER OF CONGRESS TO SUPERSEDE THE ILLINOIS STATUTE INSOFAR AS THE LATTER WOULD SUSPEND THE RIGHT OF CERTIFICATED CARRIERS TO ENGAGE IN INTERSTATE COMMERCE ON THE HIGHWAYS OF THE STATE

Petitioners attempt to present a constitutional doubt with respect to the power of Congress to supersede the suspension provisions of the Illinois statute by suggesting that "This Court has never held that the Commerce Clause empowered the Federal government to take over without compensation property of the state" (Brief for the Petitioners, pp. 8-9). Of course, the holding of the Illinois Supreme Court implies nothing with respect to the power of Congress to take the property of Illinois without compensation. If petitioners' suggestion has any application to the present problem, the contention apparently is that the state may, if it wishes, prevent its property in general, and therefore its roads in particular, from being used for the purposes of interstate commerce.[12]

12 To support the rather nebulous proposition that "State property is not subject to the restraints of the Commerce Clause" (Brief, p. 9), petitioners cite such cases as *Geer v. Connecticut*, 161 U. S. 519 (1896), holding that a state could, without violating the Commerce Clause, prohibit wild game shot within the state from being taken outside the state; *Hudson County Water Co. v. McCarter*, 209 U. S. 349 (1908), that a state could prevent the diversion of state waters to uses outside the state; and *Rayonier Fish Flour Co. v. Gentry*, 297 U. S. 422 (1936), that a state could prohibit sardines caught within the state, or brought into the state in a fresh condition, from being manufactured into fish flour. With at least as much relevance, petitioners might also have cited *Foster-Fountain Packing Company v. Haydel*, 278 U. S. 1 (1928), holding invalid, as a burden on interstate commerce, a state statute prohibiting shrimp taken from the waters of the

Whether the state could indeed deny the use of its roads to interstate commerce, while opening them to the same kind of intrastate commerce, without unconstitutionally discriminating against interstate commerce, is an interesting question which need not be explored for present purposes. Neither is any question presented here of the right of Illinois to build and maintain highways from which commercial motor vehicles operating in both interstate and intrastate commerce are excluded. Illinois, like other states, invites interstate motor carriers to make use of its highways, and it is upon the basis of that invitation, and the availability of the state highways for the needs of interstate commerce, as well as those of national defense and the postal service, that the national government makes substantial contributions to the cost of the state highways systems. See *Nashville, Chattanooga & St. L. Ry.* v. *Walters*, 294 U. S. 405, 417 (1935); *Maurer* v. *Hamilton*, 309 U. S. 598, 604 (1940).[13] The question here is

state from being exported out of the state if the shell, or hull at least, had not been removed. Furthermore, the limited scope of decisions dealing with game, fish, and water may be deduced from the refusal of this Court to apply the same principles to natural gas. *Pennsylvania* v. *West Virginia*, 262 U. S. 553 (1923).

If some helpful principle may be drawn from these cases dealing with certain natural resources of the state, it would seem to be that while a state may keep certain resources at home for consumption within the state, once it permits them to be used for purposes of interstate commerce, no undue burdens may be placed upon such commerce. But as stated in the text, the entire application of the first part of that proposition to state highways is at least doubtful, particularly so when there is a controlling federal statute involved.

13. The background of Federal-aid highway legislation indicates the understanding of the Federal government regarding the permissible uses of state highways. As stated in the opinion of this Court in *Nashville, C. & St. L. Ry.* v. *Walters*, 294 U. S. 405, 417-418 (1935):

> "• • • The aim of that legislation is 'a connected system of roads for the whole Nation;' 'to provide complete and economical highway transport throughout the Nation;' to furnish 'a new means of transportation, no less important to the country as a whole than that offered by the railroads;' to establish 'lines of motor traffic in interstate commerce.' The immediate interest of the Federal Government is, in part, the national defense as well as the transportation of the mails."

simply what conditions and what forfeitures Illinois may constitutionally place upon interstate motor carriers using its highways in the light of the fact that it has voluntarily opened such highways to interstate motor carrier traffic.

It should hardly be necessary, at this late date, to elaborate the proposition that a privilege within the power of a state to grant or withhold may nevertheless not be made subject to unconstitutional conditions. *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1 (1910). And if the state has a special proprietary interest in its highways, that interest does not remove the conditions which the state places upon their use from constitutional scrutiny, irrespective of whether the conditions are applicable to interstate commerce or intrastate commerce, or both. This has certainly been the assumption underlying the opinions of this Court in every case in which state highway limitations were under constitutional attack. If the state's power to condition the use of its highways were indeed subject to no constitutional restrictions, there would have been no justification for decisions such as *Buck* v. *Kuykendall*, 267 U. S. 307 (1935), and *Bush & Sons Co.* v. *Maloy*, 267 U. S. 317 (1925), holding invalid the requirement of state certificates of public convenience and necessity from interstate motor carriers. Furthermore, in considering the validity of state size and weight regulations as applied to interstate carriers, even in the absence of any applicable federal regulation, this Court did not assume the state's power was unlimited, but rather defined its inquiry as being one "to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis." See *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 191-192.

If state highway regulations may be invalidated on account of conflict with the Commerce Clause unaided by federal legislation, they may certainly be invalidated on account of fundamental repugnance to federal legislation

enacted under the Commerce Clause. So far as the regulation of hours of service, authorized by Section 204 of the Federal Motor Carrier Act was concerned, Mr. Justice Butler seemed unaware of any constitutional difficulty when he said, in *Welch Co.* v. *New Hampshire*, 306 U. S. 79, 84 (1939): "Without so deciding, we assume, so far as concerns the periods of continuous service condemned by the state commission, that when the federal regulations take effect they will operate to supersede the challenged provisions of the state statute." Such was indeed the effect generally recognized after the federal regulations did become effective. See *Public Service Commission* v. *H. P. Welch Co.*, 91 N. H. 328, 18 A. 2d 826 (1941).[14] So too in *Maurer* v. *Hamilton*, 309 U. S. 598, 610, this Court engaged in an elaborate examination to determine "whether the Pennsylvania statute is a regulation of 'size and weight' within the meaning of Section 225, or whether it is a "regulation of 'safety of operation and equipment' which the Commission was authorized to make by section 204 (1) (2)." The assumption plainly was that if it were the latter, the state statute would have been superseded by federal regulation. It is difficult to conceive of any reason why the constitutional power of Congress should

14. The same lack of difficulty found by the Court in dealing with the supersedure of state hours of service regulation, as exemplified by the second *Welch* case, is also notable with respect to the supersedure of state insurance requirements. Thus, in *Pennsylvania Greyhound Lines, Inc.* v. *Board of Public Utility Commissioners, et al.*, 107 F. Supp. 521 (1952), the Court held that an order of the Interstate Commerce Commission authorizing plaintiff to be a self-insurer superseded the demand of the New Jersey Board of Public Utility Commissioners for plaintiff to carry insurance. See also *University Overland Express* v. *Griffin*, 89 N. H. 395 (1938); *University Overland Express* v. *Alsop*, 122 Conn. 275 (1936). A similar conclusion is reached in an opinion by the Attorney General of New York dated April 21, 1949, and in an opinion by the Attorney General of Utah dated April 19, 1950, both of which are referred to in footnote 3, page 529 of the *Pennsylvania Greyhound Lines, Inc.* opinion, *supra*.

be any greater to supersede one type of regulation than the other.[15]

Finally, even if there still were any room for doubt as to the constitutional power of Congress to supersede entirely the substantive provisions of state size and weight regulations as applied to interstate commerce, the same doubt would not be applicable to the partial supersedure found by the Illinois Supreme Court with respect to only the suspension provisions of the Illinois statute. In any realistic sense, this supersedure involves a much less drastic interference with state power, since it simply removes from the state's enforcement arsenal a particular sanction. Furthermore, that particular sanction is aimed directly at the heart of the federal system of regulation, the issuance of certificates of public convenience and necessity, and tends to frustrate the basic objectives of that system. If anything is plain from an examination of the decisions of this Court on questions involving supersedure of state statutes by federal statutes, it is that when the effect of a state statute is to frustrate fundamental ob-

15. It is true that Commissioner Eastman, in his statement before the Senate Committee in 1935, indicated some doubt as to whether the Federal Government had the authority to supersede State regulations dealing with sizes and weights of motor vehicles using state highways. Subsequently, however, in the report submitted by the Interstate Commerce Commission, pursuant to Section 225 of the Interstate Commerce Act (49 U. S. C. § 325), on the question of need for federal regulation of the sizes and weights of motor vehicles, the Commission, Mr. Eastman, then acting as chairman, concluded:

> "The Supreme Court decisions reviewed above, particularly *Hendrick* v. *Maryland*, *Morris* v. *Duby*, *Sproles* v. *Binford*, *S. C. Hwy. Dept.* v. *Barnwell Bros.*, and *Maurer* v. *Hamilton*, seem clearly to recognize that Congress possesses power to regulate, at least to some extent, the sizes and weights of motor vehicles in interstate commerce, and that, should Congress exercise this power, its regulations would supersede State regulations of the same nature, insofar as interstate commerce is concerned, despite State ownership of the highways and the possession of large police power by the States in respect of conservation of and safety upon their highways." (House Document 354, 77th Congress, 1st Session, page 709.)

jectives of a federal statute, the state law must fall, even if the subject matter would otherwise be within the police powers of the state. *McDermott* v. *Wisconsin*, 228 U. S. 115 (1913); *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 (1942); *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America* v. *Wisconsin Employment Relations Board*, 340 U. S. 383 (1951). In the present case, the Illinois statute, in this narrow particular of the suspension procedure as applied to interstate commerce, would certainly frustrate some of the fundamental purposes of Part II of the Interstate Commerce Act. Because it would have that effect, the Illinois statute, in this particular, must yield to superior federal power.

CONCLUSION.

We therefore request that the judgment of the Supreme Court of Illinois, insofar as it is challenged by petitioners in this proceeding, be affirmed.

Respectfully submitted,

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APPENDIX "A".

Excerpts from Part II of the Interstate Commerce Act, 49 U. S. C.

§ 306(a) (1): "Except as otherwise provided in this section and in section 310a of this title, no common carrier by motor vehicle subject to the provisions of this chapter shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided*, however, That, subject to section 310 of this title, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate was made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after October 1, 1935, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered

in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 307(a) of this title and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful."

§ 312 (a): "Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided*, however, That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commissin, made as provided in section 304(c) of this title, commanding obedience to the provision of this chapter, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further*, That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of sections 306, 309, or 311 of this title, or by virtue of the second proviso of section 306(a) of this title or temporary authority under

section 310a of this title, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of sections 311(c), 317(a), or 318(a) of this title or with any lawful order, rule, or regulation of the Commission promulgated thereunder."

§ 316(b): "It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce."

APPENDIX "B".

Excerpts from Illinois Uniform Act Regulating Traffic on the Highways: Smith-Hurd Ill. Ann. Stats. Chapter 95½; Ill. Rev. Stats. 1953, Chapter 95½.

Chap. 95½, Sec. 228. Wheel and Axle Loads and Gross Weights. — (a) No vehicle or combination of vehicles equipped with pneumatic tires shall be operated, unladen or with load, upon the highways of this State when the gross weight on the road surface through any axle thereof exceeds 16,000 pounds; provided that upon any street or highway included in the system of State highways and constructed of concrete, brick on a concrete base or asphalt on a concrete base, which the Department designates as adequate to carry such a maximum gross weight without undue deterioration or which the Department designates as obsolescent and requiring reconstruction, or upon any street in any city, village or incorporated town, the gross weight on the road surface through any axle may exceed 16,000 pounds but shall not exceed 18,000 pounds, per axle. No vehicle or combination of vehicles equipped with other than pneumatic tires shall be operated, unladen or with load, upon the highways in this State when the gross weight on the road surface through any wheel thereof exceeds 800 pounds per inch width of tire tread or when the gross weight on the road surface through any axle thereof exceeds 16,000 pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart extending across the full width of the vehicle.

Any two consecutive axles whose centers are more than

40 inches and not more than 72 inches apart, measured to the nearest inch, shall be defined as tandem axles, and the gross weight transmitted to the road surface through axles so spaced shall not exceed 16,000 pounds per axle.

(b) The gross weight of vehicles and combinations of vehicles, including the weight of the vehicle or combination and its maximum load shall be subject to the foregoing limitations and further shall not exceed the following:

Two-axle motor vehicle	36,000 pounds
Three or more axle motor vehicle	41,000 pounds
Three-axle truck tractor semi-trailer combination	45,000 pounds
Four or more axle truck tractor semi-trailer combination	59,000 pounds
Four-axle truck and trailer combination	63,000 pounds
Five or more axle truck and trailer combination	72,000 pounds
Five or more axle truck tractor semi-trailer combination when transporting loads that cannot reasonably be dismantled or disassembled	72,000 pounds
Five or more axle truck tractor semi-trailer and four wheel trailer combination	72,000 pounds
Trailers	36,000 pounds
Vehicles operating on caterpillar type tracks	40,000 pounds

(c) Cities having a population of more than 50,000 may permit by ordinance axle loads on two-axle motor vehicles 23½ percent above those provided for herein, but such increase shall not become effective until the city has officially notified the Department of the passage of such ordinance and shall not apply to such vehicles when outside of the limits of such city, nor shall the gross weight of any two-axle motor vehicle operating over any street of such city exceed forty thousand (40,000) pounds.

Amended by Act approved July 15, 1953.

Chap. 95½, Sec. 229. Officers to Weigh Vehicles and Require Removal of Excess Loads.—(a) Any police officer having reason to believe that the weight of a vehicle and load is unlawful shall require the driver to stop and submit to a weighing of the same either by means of a portable or stationary scales. If such scales are not available at the place where such vehicle is stopped, the police officer shall require that such vehicle be driven to the nearest public scales.

(b) Whenever an officer upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer shall require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this Act and shall forthwith arrest the driver. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(c) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses when directed by an officer upon weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section shall be guilty of a misdemeanor. (Amended by Act approved August 10, 1949.)

229a. Whenever any vehicle is operated in violation of the provisions of Section 131 of this Act, the owner or driver, or both, of such vehicle shall be deemed guilty of such violation and either or both the owner and the driver of such vehicle may be prosecuted for such violation. Except as provided in the second paragrapn of this Section, any person, firm or corporation convicted of such violation shall be fined in an amount equal to two cents per pound for each pound of excess weight when the excess is 2000 pounds or less; four cents per pound for each pound

of excess weight when the excess exceeds 2000 pounds and is 3000 pounds or less, six cents per pound for each pound of excess weight when the excess exceeds 3000 pounds and is 4000 pounds or less; eight cents per pound for each pound of excess weight when the excess exceeds 4000 pounds and is 5000 pounds or less and ten cents per pound for each pound of excess weight when the excess exceeds 5000 pounds.

If the violation complained of is based upon an overload of not more than 350 pounds on a single axle and the defendant proves that such violation resulted from an unavoidable shifting of the load carried in the vehicle, the amount of the fine shall not exceed $1.00. Amended by Act approved Aug. 6, 1951.

229b. (a) (1) The words "commercial vehicle", as used in this section, shall mean a motor vehicle of the second division as defined in Section 2 of "An Act in relation to motor vehicles and to repeal a certain Act therein named", approved June 30, 1919, as amended.

(2) The words "commercial vehicle operator", as used in this section, shall mean a person, firm or corporation which, as owner or lessee, operates, whether individually or through agents, servants or employees, one or more commercial vehicles, as defined herein, upon the public highways of this state, but shall not mean a person, firm, or corporation which is solely a lessor of one or more commercial vehicles.

(3) The words "commercial vehicle operator's privilege", as used in this section, shall mean the privilege, recognized or conferred by any law of this state, of any person, firm or corporation, whether or not evidenced by any registration, license, permit or certificate and whether or not conditioned upon the payment of any tax, license fee or charge, to operate, either individually or through agents, servants or employees, one or more commercial ve-

hicles, as defined herein, upon the public highways of this state.

(b) The commercial vehicle operator's privilege of any commercial vehicle operator shall be suspended as hereinafter provided, when such commercial vehicle operator shall habitually operate one or more commercial vehicles in violation of Section 131 of this Act.

(c) It shall be the duty of each state highway policeman arresting any person for having operated a vehicle in violation of the provisions of Section 131 of this Act to ascertain the make, motor number, serial number and registration and any other identification number of the vehicle having been operated in violation of said section and if the person so arrested was operating as the agent, servant or employee of any person, firm or corporation, the name and address of such person, firm or corporation. Upon the conviction of any person for having operated a vehicle in violation of the provisions of Section 131 of this Act, such policeman shall report, in writing, to the Director of the Department of Public Safety (1) the date of the offense, (2) the name and residence of the driver, (3) the county in which the offense was committed, (4) the court and date of the conviction, (5) the amount of the fine imposed, (6) the make, motor number, serial number and registration and any other identification number of the vehicle so operated in violation of law and (7) if the person so convicted was the agent, servant or employee of another person, firm or corporation, the name and address of such other person, firm or corporation. The Director of the Department of Public Safety shall transcribe the same in the records of his office and shall send a copy of such written report by United States Mail to the person, firm or corporation in whose name the vehicle mentioned in such report is registered within five days after said name becomes known to the Director. The record of any such report so transcribed may be proved by a copy thereof

certified under the hand of said Director. Any such certified copy shall be prima facie evidence of the facts therein set forth, transcribed from the report of the state highway policeman, as above provided.

(d) Whenever it shall come to the attention of the Director of the Department of Public Safety that a total of ten convictions for violation of Section 131 of this Act have been entered during any twelve consecutive months period with respect to the operation of commercial vehicles operated by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, it shall be the duty of the Director of the Department of Public Safety to notify the Attorney General of such fact and it shall be the duty of the Attorney General to bring a proceeding in the name of the people of the State of Illinois to suspend the commercial vehicle operator's privilege of such commercial vehicle operator.

(e) Jurisdiction of such proceedings shall be in the Circuit Courts of the respective counties and the Superior Court of Cook County. The venue shall be in any county where any of the offenses referred to in Subsection (c) of this section may have occurred or as provided in an Act of the General Assembly entitled, "An Act in Relation to Practice and Procedure In The Courts of This State," approved June 23, 1933, as amended.

(f) The use and operation by any person of a vehicle over the highways of this state shall be deemed an appointment by such person of the Secretary of State, to be his true and lawful attorney upon whom may be served all legal process in any proceeding brought against him under this Act and said use or operation by him shall be signification of his agreement that any such process against him which is so served shall be of the same legal force and validity as though served upon him personally if such

person is a non-resident of this state or at the time a cause of action arises under this Act is a resident of this state but subsequently becomes a non-resident of this state. Service of such process shall be made by serving a copy upon the Secretary of State or by filing a copy in his office and such service shall be sufficient service upon such person; if notice of such service and a copy of the process are, within 10 days thereafter, sent by registered mail by the Attorney General to the defendant, at the last known address of the defendant, and the affidavit of compliance herewith of the Attorney General or an Assistant Attorney General is appended to said summons. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The Secretary of State shall keep a record of all such processes, which shall show the day and hour of such services.

When a final order is entered against any defendant who shall not have received notice of service and a copy of the process by registered mail, required to be sent to him as herein provided, and he shall within 6 months after the entry of said decree appear in open court and file a verified petition showing that he did not receive such notice of service and copy of the process and showing facts that he has a good and substantial defense to such action, he may appear and answer the allegations of the complaint, and thereupon such proceedings may be had as if the defendant had appeared in due season and no order had been entered. If it appears upon the hearing that such order ought not to have been entered, the same may be set aside, altered or amended as shall appear just, otherwise, it shall be ordered to stand confirmed against such defendant.

(g) The provisions of an Act of the General Assembly entitled, "An Act In Relation to Practice and Procedure In The Courts of This State," approved June 23, 1933, and all existing and future amendments of said Act and

modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder, except as herein otherwise provided or except when inconsistent with the provisions of this Act.

Proof that a total of ten or more convictions for violation of Section 131 of this Act have been entered during any twelve months period with respect to the operation of one or more commercial vehicles by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, shall constitute prima facie evidence that such commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act. In any proceeding brought under this section, the court shall not find that a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary, if any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations.

(h) The papers, entries and records of the Secretary of State of this state, and of the officer of any other state in whose office any such commercial vehicle may be registered, showing the ownership of any such commercial vehicle, may be proved by a copy thereof, certified under the hand of the Secretary of State of this state, or of said officer of such other state. Any such certified copy, when admitted in evidence, showing ownership of a commercial vehicle in a person of the same name as the defendant shall be prima facie evidence that the defendant is or was the owner of such commercial vehicle.

(i) Whenever the court shall find from the evidence that a commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act, it shall enter an order suspending the commercial vehicle operator's privilege of such commercial vehicle operator for a period of 90 days. If at any time thereafter in another proceeding brought under this section, the court shall find from the evidence that a commercial vehicle operator has again habitually operated in violation of Section 131 of this Act, it shall enter a similar order of suspension except that the court shall suspend the commercial vehicle operator's privilege of such commercial vehicle operator for a period of one year.

(j) Whenever the court shall enter any order under the provisions of Paragraph (i) of this section, it shall have full and continuing jurisdiction after the entry of such order to enforce any of the provisions thereof by contempt proceedings.

(k) The State's Attorney of any county where any proceedings under this section are brought shall, at the request of the Attorney General, appear and assist the Attorney General; and the State's Attorney, if requested by the Attorney General, shall take over and carry on any such proceedings commenced by the Attorney General.

(l) Whenever any commercial vehicle is operated upon the public highways of this state by or on behalf of any person, firm or corporation at a time when the commercial vehicle operator's privilege of such person, firm or corporation is suspended as provided in this Act, the driver of such vehicle shall be deemed guilty of a misdemeanor, the person, firm or corporation on whose behalf such commercial vehicle is operated shall be deemed guilty of a misdemeanor, and all agents, servants, employees or corporate officers of the person, firm or corporation on whose

behalf such commercial vehicle is operated who shall have knowingly caused or permitted such commercial vehicle to be operated shall be deemed guilty of a misdemeanor, and any one or more or all of such persons, firms and corporations may be prosecuted for such violation. Any individual person convicted of such violation shall be punished by imprisonment for not less than 10 days nor more than 90 days and in the discretion of the court, a fine of not more than $500.00. Any corporation convicted of such violation shall be punished by a fine of not less than $1000.00 nor more than $5000.00.

(m) The Director of the Department of Public Safety, within 10 days after the entry of any order suspending the commercial vehicle operator's privilege of any person, firm or corporation as provided in Subsection (i) of this section, shall send a written notice of the entry of such order to the sheriff of each county and chief of police of each municipality in this state. It shall be the duty of every peace officer to arrest the driver of any commercial vehicle which he shall observe being operated in violation of any such order of suspension.

Added by Act approved July 11, 1951.

APPENDIX "C".

Other Legislation Comparable to Illinois Suspension Provisions.

Only Indiana, in addition to Illinois, has enacted legislation embodying provisions authorizing suspension of operating rights for repeated convictions of State weight laws. The Indiana Act, Chapter 47 Burns Indiana Statutes, Section 436(b), enacted in 1951, provides, in brief, that upon 10 gross overload convictions within a one-year period, an operator who conducts his operations pursuant to a certificate or permit issued by the Indiana Public Service Commission is entitled to a hearing before the Commission to show cause why that administrative tribunal should not suspend that certificate or permit for five days. (If the operator is not subject to the jurisdiction of the Commission, he is entitled to a hearing before the Indiana Financial Responsibility Division to show cause why his privilege to use the highway should not be suspended for the same period of time.) The statute also provides for increased periods of suspension for repeated gross overload convictions. Thus, for 20 convictions within a one-year period, a 10-day suspension is authorized; for 30 convictions within a year's period, a 30-day suspension is authorized, and for more than 30 convictions in any one year, a five-day suspension for each 10 convictions in excess of 30 is authorized.

As can be seen, the Indiana statute, though similar to the Illinois law, has several important differences, chief of which is the length of the suspension period. In the Illinois act, 10 overload convictions in a one-year period are sufficient to result in a 90-day suspension, whereas,

under the Indiana law, the suspension period for the same number of convictions, would be only five days. If an operator is convicted of 10 additional violations during the same year, under the Illinois act, his highway privileges could be suspended for one year, whereas under the Indiana law, the suspension period would be only 10 days.

Another important point of dissimilarity between the two statutes is the fact that under the Illinois act, the suspension proceedings are brought before a court of law for determination of whether or not the operator's highway privileges will be suspended. Under the Indiana law, the suspension proceeding is always brought before an administrative agency which specializes in highway and motor vehicle problems, namely, the Indiana Public Service Commission or the Indiana Financial Responsibility Division.

In addition, the Indiana suspension provisions pertain only to convictions for gross overloads, and do not, as does the Illinois statute, include axle overload convictions.

Of the remaining 46 states, Washington (RCW 46.44.045), New York (Book 62 A, McKinney's Consolidated Laws of New York Annotated Sec. 70(2)), Nebraska (3 R.R.S. 1943, 39-723.05), Arkansas (6 Arkansas Statutes 1947 Annotated, Ch. 8, Sec. 75-819), Connecticut (General Statutes of Connecticut, Ch. 110, Sec. 2422), and South Dakota (S.D.C. 44.5929) have enacted statutes which provide for, in addition to fines, the revocation, for varying time periods, of the State vehicle registration certificate on each vehicle which has been repeatedly found overloaded. Such laws are clearly distinguishable and less drastic than the Illinois statute, since in the one case only the particular vehicle is ruled off the highway, whereas the Illinois act contemplates the removal of the entire trucking operation from the highways of the state.

Of the 39 remaining states, Virginia (Code of Virginia

.338.1) and Maine (1953 Laws of Maine, Ch. 309) have ade statutory provision for the suspension or revocation all highway privileges for operators who fail to pay the es assessed them for overload violations.